

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SKY TECHNOLOGIES LLC

Plaintiff,

v.

IBM CORPORATION

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 2:03cv454-Df

Judge David Folsom

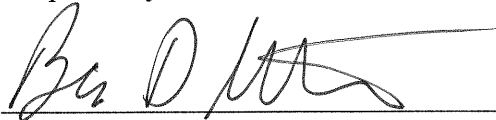
Jury Trial Demanded

**SUPPLEMENT TO  
SKY'S MOTION FOR PARTIAL RECONSIDERATION  
OF JUDGE MCKEE'S ORDER OF NOVEMBER 28, 2005**

Sky filed its Motion for Partial Reconsideration of Judge McKee's Order of November 28, 2005 on December 12, 2005. As described in the Motion (at 7, fn. 2), Mr. Conklin was unable to have his affidavit notarized in time for filing due to inclement weather.

Sky now submits this Supplement to its Motion and includes herewith the notarized affidavit of Jeffrey Conklin.

Respectfully submitted,



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San Francisco, CA 94111

Attorneys for Sky Technologies LLC

**CERTIFICATE OF SERVICE**

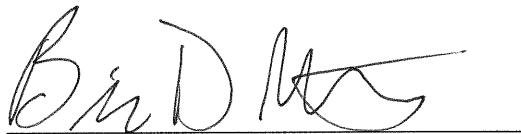
This is to certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record, this 13<sup>th</sup> day of December, 2005, as indicated below:

Damon Young  
Young, Pickett & Lee  
4122 Texas Boulevard  
P.O. Box 1897  
Texarkana, Texas/Arkansas 75504

**VIA E-MAIL**

Donald J. Curry  
Marc J. Pensabene  
Peter D. Shapiro  
Fitzpatrick Cella Harper & Scinto  
30 Rockefeller Plaza  
New York, New York 10112

**VIA E-MAIL**

  
Brian Melton

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SKY TECHNOLOGIES LLC,	§	
	§	
Plaintiff,	§	Civil Action No. 2:03CV454-DF
	§	
v.	§	Judge David Folsom
	§	
IBM CORPORATION,	§	Jury Trial Demanded
	§	
Defendant.	§	

**AFFIDAVIT OF JEFFREY M. CONKLIN IN SUPPORT OF  
SKY'S MOTION FOR PARTIAL RECONSIDERATION  
OF JUDGE MCKEE'S NOVEMBER 28, 2005 ORDER**

THE STATE OF MASSACHUSETTS	§	
	§	
COUNTY OF BARNSTABLE	§	

JEFFREY M. CONKLIN, after first being duly sworn upon his/her oath, makes  
this affidavit and states the following:

1. My name is Jeffrey M. Conklin. I am over the age of twenty-one (21) years, am competent to testify to the matters stated herein, have personal knowledge of the facts and statements in this affidavit, and each of the facts and statements is true and correct.
2. I am the founder and President of Sky Technologies LLC.
3. I was the founder and Chief Executive Officer of TradeAccess, Inc. and Ozro, Inc. from 1995 to 2001
4. Ashtiana Sundeer was employed by Ozro and TradeAccess (referred to collectively as "Ozro") as a consultant to aid company management in setting and keeping deadlines. She provided human resource-type services to Ozro, and was also

tasked with resolving inter-company disputes, particularly among Ozro executives. In this capacity, Ms. Sundeer worked closely with Ozro's upper management and was occasionally included in meetings and on correspondence to and from the executives.

5. Ms. Sundeer was given an Ozro email address and voice message account, maintained an office at Ozro's headquarters, participated regularly in Ozro executive meetings and was present in Ozro's offices for 30 hours per week, on average.

6. During the course of Ms. Sundeer's work at Ozro, she was obligated to maintain all information she received from Ozro in confidence.

7. Barry Borden was Executive Chairman of Ozro on or about February 2001 and subsequently became Ozro's CEO. Mr. Borden was also elected to Ozro's Board of Directors.

8. ThinkFire, Ltd. assisted Ozro in obtaining litigation counsel to enforce Ozro's patent rights. ThinkFire introduced Ozro to the firm of Kirkland and Ellis, LLP. Due to a conflict, Kirkland and Ellis was not able to represent Ozro.

9. ThinkFire assisted Ozro in licensing the Ozro patents.

10. ThinkFire was provided only as much of Ozro's privileged information as Sky believed necessary for ThinkFire to perform the work for which it was engaged.

11. Throughout its engagement with both Ozro and Sky, ThinkFire was under an obligation of confidentiality with regard to information received from Ozro.

12. Robert Lopes and Dan McCurdy were both employed by ThinkFire throughout the engagement by Ozro and Sky.

13. EKMS is a company that worked with Ozro to obtain legal counsel for the company. EKMS specifically communicated with the lawfirm of Bartlitt Beck Herman

Palenchar & Scott, LLP on Ozro's behalf for purposes of representing Ozro. In the course of attempting to obtain legal counsel for Ozro, certain privileged information was shared with EKMS. EKMS employees were under an obligation to keep Ozro's communications confidential.

14. WitSoundView is a company that was involved with Ozro in an attempt to sell Ozro. As part of Wit's involvement with Ozro, Wit employees were allowed to receive privileged communications from Ozro's attorneys in order to perform their work. Wit employees understood that all such communications were to be kept confidential.

15. Cross Atlantic Capital Partners was a secured creditor of Ozro and ultimately owned all of Ozro's secured debt. Cross Atlantic

16. Maureen Stretch was Ozro's patent attorney and prosecuted all of the patents-in-suit. Ms. Stretch also advised Ozro with regard to intellectual property and corporate legal issues.

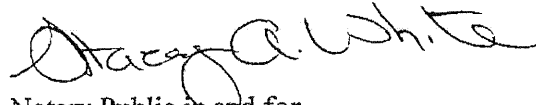
17. At the time of the email labeled Sky 107363, Ms. Stretch assisted me in attempting to determine whether IBM infringed Sky' patents.

18. Ms. Stretch is currently engaged by Sky to provide legal advice and services to Sky for the prosecution of certain patent applications related to the patents-in-suit.

FURTHER, AFFIANT SAITH NOT.

  
JEFFREY M. CONKLIN

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public, by JEFFREY M. CONKLIN, on this 5th day of December, 2005, to certify which witness my official hand and seal of office.



Notary Public in and for  
The State of Massachusetts



STACEY A. WHITE  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires March 28, 2008